EXHIBIT "D"

EXHIBIT "D"

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____

OMER LEVY,   )
)
        Plaintiff,   ) No. 11-CV-3155
)
v.   )
)
RECEIVABLES PERFORMANCE   )
MANAGEMENT, LLC,   )
)
        Defendant.   )
)

_____

VIDEOTAPED DEPOSITION OF CHRISTOPHER VITTOZ, VOL. I

8:20 a.m.

Thursday, April 12, 2012

Seattle, Washington

_____

Reported by:

Scott Sinclair, CCR
CCR No. 3012
Job Number: 328856

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Christopher Vittoz - Volume I   April 12, 2012

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1   BE IT REMEMBERED that on Thursday, April

2   12, 2012, at 15920 West Valley Highway, Seattle,

3   Washington, at 8:20 a.m., before Scott Sinclair,

4   CCR and Notary Public in and for the State of

5   Washington, appeared CHRISTOPHER VITTOZ, the witness

6   herein.

7   MR. MAURO: Okay. So this -- my name is Joseph

8   Mauro, and this is the -- I am sitting in the

9   Embassy Suites in Seattle, Washington, and today is

10   April 12th, 2012. And this is the videotaped

11   deposition of the 30(b)(6) representative, the Rule

12   30(b)(6) representative of Rec- -- Defendant

13   Receivab- -- Receivables Performance Management.

14   The deponent is Christopher Vittoz. And this --

15   this deposition is being videotaped at all times.

16   The matter is Omer Levy versus Receivables

17   Performance Management in the -- pending in the

18   Federal District Court for the Eastern District of

19   New York under Docket No. CV11-3155. And I would

20   ask that everybody at the table repre- -- state

21   their name for the record, starting with the

22   witness.

23   THE WITNESS: Christopher Vittoz.

24   MR. SHAFER: Andy Shafer, attorney for RPM.

25   MR. MAURO: I understand that Mr. --

Christopher Vittoz - Volume I   April 12, 2012

7

 1   Correct?

 2   A.   Yes.

 3   Q.   And did you have an opportunity to review the

 4   deposition notice that -- that I sent out to your

 5   defense counsel?

 6   A.   Yes.

 7   Q.   Okay. And do you understand the categories of

 8   information that I intend to ask you questions about

 9   today?

10   A.   Yes.

11   Q.   Okay. And are you -- are you prepared to answer

12   questions on every one of those categories?

13   A.   Yes.

14   Q.   Are you -- are you aware of the lawsuit Omer Levy

15   versus Receivables Performance Management?

16   A.   Yes.

17   Q.   When did you become aware of it?

18   A.   Last year in the middle of the year. I think July

19   probably, July or August.

20   Q.   Okay. And did -- you obviously prepared for the --

21   for the deposition here today. Correct?

22   A.   Uh-huh.

23   Q.   And you've read through what information RPM has

24   regarding the case. Correct?

25   A.   Yes.

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170

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 1        the Telephone Consumer Protection Act?

 2   A.   Yes.

 3   Q.   Do you know how many times?

 4   A.   I don't.  I don't know.

 5   Q.   Has -- after January of 2011, has RPM been sued for

 6        violating the -- the Telephone Consumer Protection

 7        Act?

 8   A.   I believe so, yes.

 9   Q.   And in -- in the calendar year 2012, has RPM been

10        sued for violating the Telephone Consumer Protection

11        Act?

12   A.   I don't know.

13   Q.   How did you create -- well, withdrawn.

14            The -- the Noble call list, what document is

15        that?

16   A.   This one?

17   Q.   Yeah.

18   A.   You're talking about this document?

19   Q.   Yes.  I'm referring to Plaintiff's Exhibit Number 4.

20        Is it fair to say that that's a call history report

21        created in the -- in the Noble dialer system?

22   A.   Yes.

23   Q.   Okay.  And it was created by RPM?

24   A.   Well, it's created by the Noble system, you know,

25        based on activity that RPM did.
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Christopher Vittoz - Volume I   April 12, 2012

171

1   Q.   Okay. So the Noble system is in a computer at RPM.

2   Correct?

3   A.   Yes, yes.

4   Q.   And some -- did -- is it fair to say that somebody

5   at RPM created that call history report?

6   A.   Yes.

7   Q.   Do you know who?

8   A.   No.

9   Q.   Is there a legal compliance -- withdrawn.

10   Is -- is there a lawyer on staff at RPM?

11 A.   No.

12 Q.   Is there anybody who is in charge of interpreting

13   the Telephone Consumer Protection Act?

14 A.   I guess it would be, you know, compliance, our

15   compliance department.

16 Q.   RPM is a debt collector. Correct?

17 A.   Correct.

18 Q.   Do you have any -- any evidence to suggest that --

19   that Omer Levy's account was something other than a

20   consumer account?

21 A.   No.

22 Q.   Okay. And just so we're clear, I believe we covered

23   this earlier, but this is important. The defendant

24   RPM, is it fair to say that the defendant RPM does

25   not have any definitive evidence that Omer Levy

Christopher Vittoz - Volume I   April 12, 2012

172

1   consented to be called on his cellular phone?

2   A.   Definitive, no. Just the note lines in the file.

3   Q.   Okay. Those are the only -- that's the only pieces

4   of evidence, and we've already spoken about those

5   earlier. Right?

6   A.   Yes.

7   Q.   Okay. So look -- looking at the -- the Plaintiff --

8   Plaintiff's Exhibit 1, the collection notes, every

9   time that we see in the "who" column NOB, does that

10   refer to the Noble dialer?

11   A.   Yes.

12   Q.   Okay. Now, every time that the -- withdrawn.

13   Okay. Every time that we see the initials or

14   the letters RTP, does it stand for refuse to pay?

15   A.   Yes.

16   Q.   And does refuse to pay -- what does refuse to pay

17   mean in -- in -- in the parlance of RPM?

18   MR. SHAFER: I'm going to object to form.

19   Q.   Okay. What do you understand the RTP in these notes

20   means?

21   MR. SHAFER: Object to form. There's been a

22   change over time, Counsel.

23   MR. MAURO: Thank you.

24   BY MR. MAURO:

25   Q.   The time of July 2010 through January of 2011, what

Christopher Vittoz - Volume I   April 12, 2012

176

1   Q.   Let -- let me just get the question out.

2   A.   Sorry.

3   Q.   No problem.

4   Has DNC always meant the same thing in the

5   collection notes of RPM?

6   A.   Yes.

7   Q.   So whenever you see DNC in the collection notes of

8   RPM, the system would have terminated all further

9   calls to a consumer. Correct?

10 A.   Correct.

11 Q.   Okay. Now, at some point in these notes where we --

12   where we see the abbreviation that says MRR in the

13   action column. Do you see that?

14 A.   Yes.

15 Q.   Okay. What -- what does that stand for?

16 A.   Mister at residence.

17 Q.   All right. Now, I understand that that mean -- that

18   that -- and please correct me if I'm wrong, but I

19   understand that the action column -- withdrawn.

20   Is it true that a collector can manually enter

21   MRR into the action column?

22 A.   Yes.

23 Q.   And is it also true that the dialer sometimes adds

24   MRR into the action column?

25 A.   No.

Christopher Vittoz - Volume I   April 12, 2012

                                                                    186

 1   A.   Correct.

 2   Q.   So it is only when a person enters the DNC that the

 3   calls are all shut down?

 4   A.   Correct.

 5   Q.   When a consumer informs RPM that the consumer is

 6   considering suing RPM, does RPM consider that as a

 7   request not to be called any longer?

 8   A.   That's how I would prefer that our reps handle that,

 9   yes.

10   Q.   Uh-huh. Is it -- is that the policy --

11   A.   Yes.

12   Q.   -- of RPM?

13   A.   Yes. They should actually put in a different code

14   than DNC, but it has the same effect. COMP is the

15   policy. That's what they should put in, complaint,

16   if there's any sort of complaint of any nature.

17   Q.   Okay. Was that the policy of RPM from July of 2010

18   through January of 2011?

19   A.   Yes.

20   Q.   So if a -- if a consumer tell -- told a

21   representative of RPM during that time period that

22   the consumer was considering suing RPM, it was the

23   policy of RPM to stop calling the consumer?

24   A.   Yes.

25   Q.   Did -- did Omer Levy do that?

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AccuTerm Screen Print - Desi Nichols (dsn) on rpm at port 48 (1)    16:27:38 05 Jul 2011
07:28PM*                                                                   07-05-11

 1 debtor... 22089481            7 bday....05-20-76      13 baldue       0.00
 2 name..... LEVY, OMER          8 sbday...              14 dsk days    998 0
 3 spouse...                     9 ssn..... ...7928      15 contacts      24
 4 addr..... 186 AVENUE V       10 sssn....              16 mailret mc mana
 5 zip...... 11223 Brooklyn, NY 11 status..CAN-1         17 score.. 530
 6 email....                    12 note....see notes

20 no who s ...dates times acti resu fc ft ...dates comments...................
  222 AWC * 11-27-10 14:55 mrr  rtp  F  10 11-30-10 claims has atty is going to
  287 kck   12-31-10 08:15 mrzc hu   f  10 12-31-10 z ci id'd z he immed ask me
  319 dsn   07-05-11 16:27 rltr legl d  00 07-06-11 rcvd copy of draft complaint
                                  Phones
 No ptype pstat phones...... phone.comments................. src.. who ...pdate
L 1 hm    dnc   646.286.4424 good z ### ci                   tucp  dsn 07-05-11
L 2 wk          ...
L 3 swk         ...
L 4 atty        ...
L 5

Enter FIELD or LINE NUMBER to change or FUNCTION (? for help):
```

5

EXHIBIT
1
4-11-12

PENGAD 800-631-6989
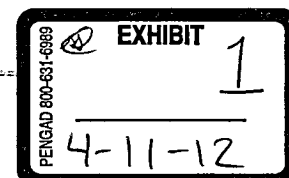
AccuTerm Screen Print - Desi Nichols (dsn) on rpm at port 48 (1)   16:27:43 05 Jul 2011

07:28PM*   1 of 1   Debt Details   07-05-11

```
 1 DEBT...... 25629430                15 CRED.CLASS unk
 2 CLIENT.... 10032 Main Street Acquisi 16 LC.DATE... 07-14-10
 3 CREDITOR.. Ameritech Gold MasterCard 17 LISTED.... 07-14-10
 4 TYPE...... OA                      18 HOLD.DATE.
 5 DEBTOR.... 22089481 LEVY OMER       19 STATUS.... CAN
 6 NAME...... LEVY, OMER               20 FACE.AMT..
 7 SPOUSE....                          21 .......... Orig Amts   Bals Due
 8 ADDR...... 186 AVENUE V             22 PRINCIPAL.  3,341.11   3,341.11
 9 ZIP....... 11223 Brooklyn, NY       23 RETURN.FEE     0.00       0.00
10 DUP.CODE..                          24 OTHER.AMT.     0.00       0.00
11 COMM.RATE. 34.00                    25 INTEREST..   327.10     478.70
12 BANK......                          26 LEGAL.COST     0.00       0.00
13 ORIG.CR.NO 5408010029942782         27 DAMAGES...     0.00       0.00
14 CHECK.NO.. ref# 11010376            28 TOTALS....  3,668.21   3,819.81
```

```
      Notices
 No DNS..... DN.DATES
L 1 msa       07-16-10


    Change:      <==
                                    ****  This is the last debt!! ****
S/W: 2=Notices 3=Phones & ID 4=Payments 5=Credit Bure 6=ACH 7=Notes
```

6

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```
AccuTerm Screen Print - Desi Nichols (dsn) on rpm at port 48 (1)    16:28:46 05 Jul 2011
07:29PM*                              Phones                              07-05-11
debtor:22089481


  No ptype pstat phones...... phone.comments................. src.. who ...pdate
   1 hm    dnc   646.286.4424 good z ### ci                    tucp  dsn 07-05-11
   2 wk          ...
   3 swk         ...
   4 atty        ...
   5




      Line No. (1-5):       <==

 S/W: 2=Phones 3=Actions 4=Notes 5=Payment  6=Emp Addr 7=Other Ad 8=FACT rpt
```

7

007

```
AccuTerm Screen Print - Desi Nichols (dsn) on rpm at port 48 (1)    16:28:52 05 Jul 2011
|07:29PM*                              Notices                              07-05-11 |
|DEBT:25629430                                                                       |
|                                                                                    |
|                                                                                    |
| No DNS..... DN.DATES                                                               |
|  1 msa       07-16-10                                                              |
|  2 msaglb    07-16-10                                                              |
|  3 msahso    08-08-10                                                              |
|  4                                                                                 |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|                                                                                    |
|    Line No. (1-4):      <==                                                        |
|                                                                                    |
|S/W: 2=Notices 3=Phones & ID 4=Payments 5=Credit Bure 6=ACH 7=Notes                 |
|                                                                                    |
```

8

```
AccuTerm Screen Print - Desi Nichols (dsn) on rpm at port 48 (1)    16:30:23 05 Jul 2011
show.actions.debtor:   as of 16:29:37 05 Jul 2011                              page 1
all actions for 22089481 LEVY, OMER                                              dsn

who.    date     time. action result fc   fdate    comment.......................

sys   01-18-11 15:36 nc     can     d    01-18-11 debt canceled: cc
Nob   01-18-11 05:06 res    rec     F    01-19-11 646.286.4424 no msg left
nec   01-17-11 09:32 PAA    HU      f    01-17-11 Z HU
nec   01-17-11 09:30 paa    hu      f    01-17-11 z hu
Ayp   01-17-11 07:42 res    na      f    01-18-11 646.286.4424 no ans
Mit   01-17-11 07:00 res    hux     F    01-18-11 646.286.4424 hup xfer
ldk   01-17-11 06:54 PAA    HU      f    01-17-11 Z HU
Mca   01-17-11 06:22 res    na      f    01-18-11 646.286.4424 no ans
Gct   01-17-11 06:08 res    bz      F    01-18-11 646.286.4424 busy
Mtw   01-16-11 06:59 res    hux     F    01-17-11 646.286.4424 hup xfer
Mra   01-15-11 08:01 res    na      F    01-16-11 646.286.4424 no ans
Ssg   01-14-11 06:01 res    hux     F    01-15-11 646.286.4424 hup xfer
Gct   01-13-11 05:35 paa    hu      F    01-14-11 646.286.4424 hung up
Dbk   01-13-11 05:11 paa    hu      F    01-14-11 646.286.4424 hung up
Gct   01-12-11 05:45 paa    hu      F    01-13-11 646.286.4424 hung up
Sab   01-12-11 05:23 res    hux     F    01-13-11 646.286.4424 hup xfer
Nob   01-11-11 14:01 res    hdrp    F    01-12-11 646.286.4424 hold drop
Gct   01-11-11 05:46 paa    hu      F    01-12-11 646.286.4424 hung up
Stp   01-11-11 05:25 res    rec     F    01-12-11 646.286.4424 ans machine
```

9

```
AccuTerm Screen Print - Desi Nichols (dsn) on rpm at port 48 (1)    16:30:25 05 Jul 2011
show.actions.debtor:    as of 16:31:02 05 Jul 2011                              page 2
all actions for 22089481 LEVY, OMER                                               dsn

who.    date    time. action result fc    fdate    comment.......................

Nob  01-10-11 11:20 res    rec     F    01-11-11 646.286.4424 no msg left
Mit  01-09-11 09:54 res    hux     F    01-10-11 646.286.4424 hup xfer
Nob  01-09-11 07:06 res    rec     F    01-10-11 646.286.4424 ans machine
Nob  01-08-11 10:04 res    na      F    01-09-11 646.286.4424 no ans
Npe  01-07-11 07:00 res    hux     F    01-08-11 646.286.4424 hup xfer
Mmp  01-07-11 06:18 res    rec     F    01-08-11 646.286.4424 ans machine
Dbk  01-06-11 05:04 res    hux     F    01-07-11 646.286.4424 hup xfer
Wms  01-05-11 13:59 res    hux     F    01-06-11 646.286.4424 hup xfer
Roa  01-04-11 05:01 paa    hu      F    01-05-11 646.286.4424 hung up
Sab  01-03-11 13:59 res    lmtc    F    01-04-11 646.286.4424 left msg
Nob  01-02-11 07:13 res    hdrp    F    01-03-11 646.286.4424 hold drop
sys  01-02-11 00:46 nc     bp      f    01-02-11 broken promise
kck  12-31-10 08:15 mrzc   hu      f    12-31-10 z ci id'd z he immed ask me to
                                                 hold.......put me on perma hold
Nob  12-31-10 07:30 res    rec     F    01-01-11 646.286.4424 ans machine
Sab  12-30-10 06:37 paa    hu      F    12-31-10 646.286.4424 hung up
Dbk  12-29-10 05:13 paa    hu      F    12-30-10 646.286.4424 hung up
Nob  12-28-10 10:57 res    rec     F    12-29-10 646.286.4424 ans machine
Sab  12-28-10 06:47 paa    hu      F    12-29-10 646.286.4424 hung up
```

10